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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 29th November 2006

No. 10607—li/1(B)-70/1999-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th October 2006 in Industrial Disputes Case No. 29 of 1999 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute exist between the management of M/s New Orissa Beedi Company, Oriya Bazar, Cuttack and its workman Sk. Basu represented through Cuttack Commercial Workers' Union, Gosala Road, Cuttack was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE COURT OF THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 29 OF 1999

Dated the 18th October 2006

*Present :*

Sk. Jan Hossain, o.s.j.s. (Sr. Branch)  
Presiding Officer, Industrial Tribunal  
Bhubaneswar.

*Between :*

The Management of . . First Party—Management  
M/s New Orissa Beedi Company,  
Oriya Bazar, Cuttack.

And

Their Workman Sk. Basu, represented through . . Second Party—Workman  
Cuttack Commercial Workers' Union,  
Gosala Road, Cuttack.

*Appearances :*

For the First Party-Management	..	Shri R. K. Sahoo & Associates
For the Second Party-Workman	..	Shri S. Mishra, President of the Workers' Union.

**AWARD**

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 8907-LE., dated the 6th July 1999 :—

“Whether the termination of services of Sk. Basu, Khalasi/Driver by the management of M/s New Orissa Beedi Company, Oriya Bazar, Cuttack with effect from the 1st December 1991 is legal and/or justified ? If not, to what relief Sk. Basu is entitled ?”

2. The facts arising out of the claim petition are that the second party workman initially joined his employment under the first party management in the year 1962 to supply Beedi leaves and Tobacco to the workers working in the first party company. He was also engaged for sweeping and cleaning the floor. Then he was a child labourer. Subsequently, he was engaged in a vehicle as Khalasi for bringing loose beedies from different places. In the year 1975 he obtained driving licence and he was then engaged as a Driver in the vehicle used by the management. He worked up to the 30th June 1991 continuously. As he fell ill he remained on medical leave from the 1st July 1991 to the 30th November 1991. On the 1st December 1991 he went to join his duty but the management did not allow him to join. The management also did not make any payment to the workman for the sick period. So, he filed a claim petition for recovery of his dues from the 1st July 1991 to the 30th November 1991 before the Labour Court, Bhubaneswar under Section 33-C(2) of the Industrial Disputes Act, 1947. An alleged industrial dispute was raised when the management discharged him from service by oral intimation with effect from the 1st December 1991. The management had not complied the mandatory requirements of the Industrial Disputes Act. The workman filed his statements of claim through the General Secretary, Cuttack Commercial Workers' Union, Gosala Road, Nayabazar, Cuttack.

3. The first party management filed its written statement denying that there is any relationship of employee-employer between the workman and the management. The workman was never engaged by the management. He was a Driver of the vehicle hired by the management. The workman very often threatened the employees of the management with dire consequence. This fact was brought to the notice of the owner of the vehicle and when he failed to correct the driver, the management ultimately stopped the practice of hiring the vehicle.

4. On the basis of the aforesaid averments, this Tribunal framed the issue as follows :

**ISSUE**

“Whether the termination of services of Sk. Basu, Khalasi/Driver by the management of M/s New Orissa Beedi Company, Oriya Bazar, Cuttack with effect from the 1st December 1991 is legal and/or justified ? If not, to what relief Sk. Basu is entitled ?”

5. To establish the case the workman adduced evidence both oral and documentary. The management cross-examined the workman, W. W. No. 1 and there was no appearance on behalf of the management thereafter.

6. The factum of relationship between the workman and the management has been denied by the management. There is no doubt in law that the burden of proof that the claimant was in the employment of the management, primarily lies with the workman, who claims to be a workman. The degree of such proof so required would vary from case to case. In the present case, the workman examined himself and produced a document, xerox copy of judgement passed in G. R. Case No. 142 of 1986, marked as Ext. 1. In his evidence he has stated that at the age of 12 years he was engaged as a Helper in the Trolley and Jeep. He was moving to different places, namely, Balijhari, Panchagaon, Angul and Bagedia for supplying Beedies (New Orissa). In the year 1975 he obtained a driving licence for driving light personal motor vehicle and he was engaged as a Driver. He was doing the work regularly since 1962 till the date of termination i.e. the 30th November 1991. He has also stated that prior to termination he was ill for a period of one month. He was informed orally that his services were terminated. He has further added that the management had not complied the mandatory provisions of the Industrial Disputes Act before terminating his service. The witness has stated that he had filed a case for payment of arrear salary in the Labour Court, Bhubaneswar. In that case the order was made to pay his arrear dues. The management had filed a writ in the High Court against the said order. As against this, as found, no evidence whatsoever has been adduced by the management to rebut the evidence produced by the workman. It appears that the management remained contented by filing written statement and cross-examining W. W. No. 1 wherein it denied the claim of the workman and took a plea that he was engaged as a Driver in the vehicle hired by it. None was examined to prove that aspect. Ext. 1 is the xerox copy of the judgement in G. R. Case No. 142 of 1986. In the judgement the workman was described as Driver in vehicle No. OSU-7355. No explanation by way of evidence has been produced to show for what purpose the workman was described as Driver in the judgement delivered in a criminal case. There was no challenge to the materials produced by the workman.

In the above stated facts I am of the opinion that the relationship of employer-employee does exist between the management and the workman.

7. It is said by the workman that he was discharged by the management from service by oral intimation on the 1st December 1991 as he remained absent on account of his illness without complying with the mandatory requirements of the Industrial Disputes Act. The workman did not attend his duty for sometime, may be on account of illness as said by him. The absence as said above may have committed misconduct but his service would not be terminated without taking recourse to the procedure established by law. The workman should have been proceeded against departmentally for misconduct in accordance with law.

8. In the circumstances given above, the petition of the workman is hereby allowed. The management, who is competent authority, is to hold enquiry, if so warranted and desired against the workman. The order shall not entitle the workman to claim any back wages/pay/

salary. The period, however, shall be decided by the authority on the basis of the finding in the enquiry, if held. The enquiry shall be conducted within a period of three months from the date the Award is communicated.

The reference is disposed of accordingly.

Dictated and corrected by me.

Sk. JAN HOSSAIN  
18-10-2006  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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18-10-2006  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor  
N. C. RAY  
Under-Secretary to Government